



May 24, 1999

Ms. Pamela Wolek
Assistant City Attorney
City of Amarillo
509 S.E. Seventh Avenue
Amarillo, Texas 79105-1971

OR99-1437

Dear Ms. Wolek:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124730.

The Amarillo Police Department (the "department") received a request for all established and suggested policies, procedures, and training materials used by the department which relate to the arrest, detention or handling of mentally ill persons.¹ The requestor also seeks a copy of the department's policies on use of force or excessive force. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.² Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and (2) the requested information relates to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

To establish that litigation is reasonably anticipated, a governmental body must provide this

¹We note that a governmental body's duties under the Public Information Act begin when the governmental body receives the request, not when the requestor drafts the request. *See generally*, Gov't Code § 552.221, .301.

²Section 552.103(a) excepts from required public disclosure information:

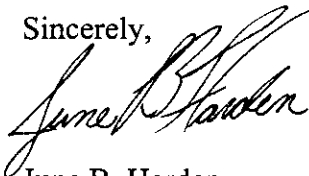
- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.³ Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You state that “[t]his request followed an unfortunate incident wherein an Amarillo Police officer shot and wounded a schizophrenic man.” You also state that “an advertisement was placed in the Sunday edition of the local newspaper seeking witnesses to the...shooting incident.” You explain that one of the phone numbers in the advertisement belongs to the injured man’s brother. Finally, you explain that “[t]o succeed in a suit against the City, a plaintiff will have to establish the violation of a custom, practice or policy of the City.” Based on the information provided, we do not believe that the city has shown that litigation is reasonably anticipated. Thus, you must release the responsive information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

²In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

Ref.: ID# 124730

encl. Submitted documents

cc: Ms. Denette Vaughn
Advocacy, Inc.
1001 Main Street, Suite 200
Lubbock, Texas 79401-3300
(w/o enclosures)